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Date 7/29/14

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Council File No., Agenda Item, or Case No.
ITEM 2 CF12-0963

I wish to speak before the City Council
Name of City Agency, Department, Committee or Council

Do you wish to provide general public comment, or to speak for or against a proposal on the agenda? ( ) For proposal
(X) Against proposal
( ) General comments

Name: JIM MCQUISTON

Business or Organization Affiliation: PROP OWNER MEDIA BID

Address: 6212 YUCCA ST LA CA 90028
Street City State Zip

Business phone: 323-464-6792 Representing:

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● McQUISTON ASSOCIATES
6212 Yucca St, Los Angeles, CA 90023-5223
(323) 464-6792 FAX same
consultants to technical management

July 21, 2014

CF12-0963
ITEM 2 Council 7/29/14
P. Lattimore

STATEMENT of J.H. McQUISTON,
CALIFORNIA-REGISTERED PROFESSIONAL ENGINEER and
PROPERTY OWNER in PROPOSED HOLLYWOOD MEDIA DISTRICT (2014-2023)

Honorable Mayor, City Attorney, and President and Members of the City Council:

This Statement is my protest per Section 36623, California Streets & Highways Code regarding proposed assessment of parcel APN 5532-030-008, **situs 1035 North Orange Drive in the Proposed District.**

The materials allegedly supporting enactment of this Proposed District are grossly insufficient as a matter of law and require substantial amendment if the City wants to enact the District. To enact this District using the present materials as support is unconstitutional per decision of California Supreme Court. A copy of that Court's decision, plus two legal commentaries thereof, is attached.

1. Engineer's Report is invalid

The "Engineer's Report" is totally defective and uncompliant with Sections 36600 *et seq,* **California Streets & Highways Code as currently in force. The Report's style and lack of content became** *passé* **in 2008.**

The Report is simply a re-hash of platitudes, which *Silicon Valley Taxpayers Association v Santa Clara County OSA,* 44 Cal 4th 431 **(2008)** *(Santa Clara)* declared **unconstitutional because Prop 218 is part of the California Constitution (Articles XIIIC & XIIID).**

Nothing in the Engineer's Report complies with the Supreme Court's unanimous *Santa Clara* **ruling** regarding what a **lawful Report must prove** per Prop 218's **special-benefit** and **proportionality strictures.**

Proof regarding specific impact, necessity, and reasonable allocation per parcel of proposed and specific work, required of the City by law and *Santa Clara,* **is totally absent. Obviously-arbitrary** assumptions and assessments **violate the plain language for streetscape work in the Streets & Highways Code,** which is the alleged subject of the Proposed District.

I reject the Report, as Professional Engineer #6091 who was qualified to make Reports long before the one who made the defective Report now in the Council File received his license to engineer buildings.

2. **Proposed District will disenfranchise almost all property owners and perpetuates an oligopoly**

Proposed District "disenfranchises" all but about 5 or 6 property owners. The other **87 or so have absolutely no way to have their voices and complaints acted-upon, if those 5 or 6 oppose them.**

As a former Director I say that authoritatively. That is how the predecessor Districts operated.

In my time as a Director and before, I witnessed the oligopoly taking "special privilege" with respect to signage, bus shelters, TV camera surveillance, waste containers, and highway "beautification". None of that benefitted anyone in the vicinity of my property, but I had to pay for it.

The Management District Plan is rigged so the predecessor oligopoly will retain absolute control.

E.g, if minorities want to have any say at all they must elect about 11 Directors. **But because of the lopsided**

ownership scheme, 87 minority-landowners can't elect more than 40 percent of Directors even if they all would vote as a uniform bloc, because of the vastly-undemocratic control by 5 or 6 landowners.

3. **City's General Plan requirement to preserve industrial capacity was subverted by the oligopoly**

The Industrial Preserve (zoned "MR": uses of such property for commerce or residence are **absolutely prohibited**, as are use-variances and conditional uses thereof) was established in 1976 **after the City realized it was losing "Hollywood's" capability, due to avaricious conversion of industrial parcels by real-estate speculators.** Before City's reaction Hollywood's **Media Industry was being forcibly-evicted.**

25 percent of the Industrial Preserve in the District **was destroyed recently with the affirmative aid and encouragement of the District Directors. Destruction threatens Hollywood's continued-viability as a Media Center and tourist attraction and replaces Media's present highly-paid jobs with minimum-wage ones.**

At no time was it proper for Directors of this Industrial-Preserve to campaign to destroy the City's General Plan. Nor were the Directors' acts authorized by the Management District Plans.

Report by the Planning Dept and CRA with SCAG data proves converting parcel from industrial to business use garners **800 percent windfall for the landowner. Directors personally-profit if their properties escape from City's industrial preserve, but they wreck City's long-term Plan for Media Survival and may incur LAMC Section 11.00 penalty** (daily fine therefor for daily misdemeanor) **by their selfish and antisocial acts.**

But, the District rewarded its largest alleged-misdemeanant with a Directorship and the oligopoly's support.

4. **Council-district staff apparently is unaware-of or else deliberately violates developments in law which now prohibits legislators from administering law governing land-uses.**

In *I.N.S. v Chadha,* 462 U.S. 919 (**1983**), the Supreme Court, prohibiting legislators from henceforth reversing action of an executive-administrator, cited among other authorities:

"The [Constitution's]Framers perceived that '[t]he accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny.' *The Federalist* No. 47. [ ] Theirs was not a baseless fear. Under British rule, the Colonies suffered the abuses of unchecked executive power that were attributed, at least popularly, to a hereditary monarchy. [ ] During the Confederation, the States reacted by removing power from the executive and placing it in the hands of elected legislators. But **many legislators proved to be little better than the Crown. 'The supremacy of legislatures came to be recognized as the supremacy of faction and the tyranny of shifting majorities.** [ ].'" *Chadha* at 960-61.

California and City strengthened laws prohibit violating City Plans, even by Councilmembers. Calif. Supreme Court in *DeVita v County of Napa,* 5 Cal 4th 763 (1995) at 772-73 said:

"Although California law has prescribed that cities and counties adopt general or master plans since 1927 (Stats.1927, ch. 874, pp. 1899-1913), the general plan prior to 1972 has been characterized as merely an 'interesting study,' and no law required local land use decisions to follow the general plan's dictates. (*City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532, 160 Cal.Rptr. 907.)

"In 1971 several legislative **changes were made to significantly alter the status of the general plan**. For the first time, proposed subdivisions and their improvements were **required to be consistent** with the general plan (Gov.Code, § 66473.5 [formerly in Bus. & Prof.Code, § 11526]), **as were zoning ordinances** (Gov.Code, § 65860). (Stats.1971, ch. 1446, §§ 2, 12, pp. 2855, 2858; *City of Santa Ana, supra,* 100 Cal.App.3d at p. 532, 160 Cal.Rptr. 907.)

"Moreover, **charter cities were no longer completely exempted** from the requirements of the planning law; **these cities had to at least adopt general plans with the required mandatory** elements. (Gov.Code, § 65700, subd. (a); Stats.1971, ch. 1803, § 2, p. 3904.) Thus after 1971 the **general plan truly became, and today remains, a 'constitution' for future development.**"

Planners but **not CD staff** are the City's recognized-experts on **City's needs for future safety and general welfare. Planners devised the Industrial Preserve,** which retained Media in Hollywood 38 years since 1976.

Hearing **testimony of CD staff-members ignoring clear Law,** one may conclude **CDs support** *ad-hoc* **avarice** instead of the City's future. **City could not have lost 25 percent of Media Area without CD interference.**

Certain CD staff must believe it is "still 1971". **Because avaricious landowners want to escape Plan restrictions, and if Councilmembers mistakenly support them as mere-constituents,** Councilmembers **destroy the General Plan the City created to keep the City's future safe and well.**

If the District is to be revived, the Council must require CDs to support and Obey City's General Plan. A substantial part of that support involves condemning Plan-violators.

5. **District Board is top-heavy with Real Estate Agents and not with industrial-preservationists**

Real Estate Agents make a living by selling property. A property sold for business instead of industry garners **eight times the commission for the Agent.**

A Director-Real Estate Agent was upset when I objected to his "permitting" a "business use" *coaching children from a remote grammar-school* in a Media-District building ***absolutely-restricted to industrial use.***. His argument to me was that **the owner will make substantially-more than is normal for industrial use.**

The City has a General Plan and zoning ordinance **to control people whose mentality is like that Director and who presently** *can and do* **wreak destruction on the City's General Plan and its Zoning Code.**

The Media District now has a **superabundance of Real Estate Agents** on its operating Board. **If the City intends to install a new Media Business District, it must utilize a different "Owners' association" or else substantially-prevent the association's ability to destroy the City's Industrial Preserve and the General Plan's integrity.**

Otherwise, Mayor's and Councilmember Krekorian's efforts to "keep Hollywood in Hollywood" will fail.

6. **Proposed assessment for sidewalk maintenance-assessment is improper per constitution and law**

Graffiti-removal on property is a service already provided by the City as part of its General Fund, so Prop 218 and Section 36632 prohibit the Plan's assessment for graffiti removal on any Media property.

Prop 218 and Sections **5023** *et seq* and **5871** *et seq* mandate that the property owner must construct, reconstruct, maintain, and pay the costs thereof, for the **City's easement over the property,** which consists of street (to its center), gutter, curb, sidewalk, alley, lighting, planting, hydrants, etc.

No time-and-motion-derived value for per-unit maintenance was set forth in the Proposed Management District Plan. No Prop-218 assessment may be assigned per property without it. The Proposal's "boiler-plate" assumption and thereafter-splitting was specifically-disallowed in *Santa Clara.*

Section 5871(f) mandates that measurements for assessments regarding street lighting shall be "the **front footage of property** benefitting from existing installations". Similarly, the **assessment for sidewalk cleanup must be calculated from the area of the "property's sidewalk"** (defined in Sts & Hwys Code), **not calculated** from the property's building-area nor parcel-area as proposed by the defective Management Plan.

Everyone who cleans-up "sidewalks" knows they become cluttered again, some sooner depending on their specific location. **Regardless of proposed occasional District cleanup, the property owner is required to maintain "sidewalks" per Section 5610** *et seq.* **We maintain our sidewalk daily and others maintain their sidewalks more than daily, on account of trash constantly-dumped by passing vehicles and pedestrians.**

An assessment may be placed on property owners for **doing what property owners themselves are required to do on their own properties, but no one may be "assessed" for work on another's property.** That would

be a "tax"; Prop 218 constitutionally-prohibits it, and Section 36602 *et seq* provides only for "assessments".

Section 36622 (k) **no longer permits exempting District-properties from assessment.** Stats 2013. The **Engineering Report does not comply** with that Section. Const Article XI requires the City to adhere to General Law 36622 and constitutional mandates thereby.

To assess for doing what City and property owners otherwise are required to do, this Management Plan and the entire method and amounts of its assessments must be substantially-amended, per ***Santa Clara.***

7. **Proposed amount for security-assessment is improper per constitution and law**

The Engineering Report is wrong; the Proposed District is **substantially an industrial preserve and is not for use other than industrial, per General Plan. "Businesses" and "residences"** (distinguished e.g. in Government Code 65302(a) and City Codes from "industry") **are absolutely prohibited in an Industrial Preserve.**

City safety-considerations discourage pedestrian-activity in any industrial preserve, because safety depends on the Police's reasonable suspicion of pedestrians therein being "nefarious". The only vehicles should be the industrial-workers' or the shipment and delivery trucks.

There is **no need for the Management Plan to assess** for "informational direction" by any District personnel.

City Policy transfers Police-surveillance to City zones which are "commercial" or "residential" instead, where "reasonable suspicion" of pedestrians therein is prohibited by courts.

Security must be "special" to be allowed by Prop 218. It may not substitute for City Police Dept protection. Allowable-assessment is thereby-limited to **non-contact observers, and only for streets and alleys.** Observers must call Police, Fire, 311 or Building & Safety if they encounter Code-violators or emergencies.

But **existing security has not eradicated substantial, repetitive Code violators** near my parcel and near others; violations which LAMC Section 11.00 defines as **"daily public nuisances" and "daily misdemeanors"**. Because it is "as ineffective as anti-lion powder", **the security plan requires amendment or elimination.**

Section 36622 (k) **no longer permits exempting certain properties from assessment.** Stats 2013. The **Engineering Report does not comply** with that Section. Const Article XI requires the City to adhere to General Law 36622 and constitutional mandates thereby.

As with sidewalk maintenance, the assessment for security **must be calculated from reasonable mission, paths and periods of the security personnel on streets and alleys, not** per defective Management Plan **calculated from the property's building-area nor parcel-area.**

As Director and Professional Engineer, I calculated the **reasonable size of Media's security-force and the reasonable cost thereof,** for the Plan-authorized level of patrol 24hrs/day, 7 days/week. **My Report was not adopted for use by the oligopoly running the District.**

The Management Plan lacks the required security-calculation. Currently **security observers are improperly utilized and the periodicity is inefficient. Nothing in the Proposed Plan corrects** these shortcomings, and Plan's **assessment based on arbitrary lump-sum is not allowable** per *Santa Clara.*

Besides bicycle or auto surveillance, District bought and installed a few video monitors with **vision limited to only a very-few properties. Violating Prop 218, cost and maintenance were assessed on properties getting absolutely no benefit whatsoever from them and without the statutory process.**

The prior district spent assessments on substantial capital investments only for Highland Avenue, which investments were not at all justifiable per Prop 218 for this large industrial-preserve district.

Proposed Management Plan continues to withhold plans for spending on capital goods which it obviously-

intends to buy, and the justification of expense thereof is again-lacking.

8. **Proposed District Management is Top-heavy and Not Economically Justified**

Since 1959 McQuiston Associates furnished engineering and management-consulting to various-sized clients, including *pro bono* services at City Hall Departments and Offices, neighborhood associations and Neighborhood Councils, the CRA, the Elected and the In-house City Charter Commissions, and others.

As an interested party and also as an elected Director I analyzed the management of the Media District B I D.

I concluded that its **prior management was top-heavyand its design accumulated costs unnecessarily by holding superfluous meetings, permitting fees on fees, and featherbedding.**

The Media District B I D partakes of the **City's full faith and credit.** The City may choose to operate it without the use of any of the subcontractors, or without the "non-profit association" which is City's contractor for management.

There is no additional expertise required for the City to manage Hollywood Beautification team (HBT), already a City contractor. Nor is there additional expertise required for the City to manage the security subcontractor. I believe even Public Works and the Police Dept, e.g, are easily-able to operate the B I D if the City desired to "eliminate the middlemen" and consolidate, as lately City Departments are doing.

But if the City proceeds to hire a contractor to manage **its B I D, without competitive bidding as before, then the current top-heavy and oligarchic management-scheme must be addressed and amended.** Such management promotes unrest in this and other B I Ds in this City. It generates a cause for leaving Hollywood.

E.g, there is no reason for allowing the manager to receive a percentage as fee for letting a subcontract. Appearance of bribery aside, the manager benefits if the contract gouges the B I D. Yet that is the presumed *modus operandi* therein; at least it was while I was Director and Icomplained about the practice to no avail.

Presently the substation for the Security subcontractor, and the substation for the Management subcontractor, lie within the District's proposed boundary. **They are accessible if not always quickly-responsive. But the principal office for the Management subcontractor is far away** in the San Fernando Valley and the Manager **is almost never accessible** because of various excuses.

The Management subcontractor currently- employed a very-capable person at the Media's substation. He was previously employed at City Hall and is highly-familiar with routines and personnel there.

I believe the top-heaviness will be relieved if that person becomes the B I D Manager and the personnel in San Fernando Valley are discharged. That person is capable-enough to manage the B I D, reduce unnecessary Directors' gatherings, and, balance the books more-thriftily.

There is no doubt he will forcefully-attack the B I D's serious scofflaw-problems which threaten its viability and which the Valley manager apparently declines to address. He knows how to exercise City's "muscle".

There is no doubt that he will employ technology, which the Valley manager apparently will not, thereby making the B I D safer and more-efficient but at reasonable cost.

There is little doubt that he will render the B I D more open and responsive to legitimate complaints.

There is little doubt that he could prohibit the continued domination of the oligarchy, by revising the rules by which they perpetuate their stranglehold on nominations and elections of Directors.

In my professional opinion, the foregoing will not happen without appropriate intervention by the City.

9. Proposal is not a renewal but constitutes a "new" District; its initial term is limited to 5 not ten years

Section 36222 (h), Stats 2013,plainly and unambiguously states:

"In a new district, the **maximum number of years shall be five."**

The boundary of the new District does not match the boundary of the old district. It constitutes a "new" district. And, parcels which the expired-district will "seize" by *force majeure* require re-evaluation sooner than a ten year period (actually 15 years counting the initial five-year period preceding the ten years allowed after the five-years of "trial" as a B I D) permits.

Do not swallow the District's improper attempt to call a "new, bigger boundary" an "old boundary".

10. **Proposal fails to provide for separate vote for or against annexation into the former B I D by the area proposed to be consolidated into the "new" B I D**

In 2, *supra,* it was pointed-out that the peculiarity of the present District is that it is controlled by an oligarchy which brooks no attention to minority-landowners. **If the voting is performed and counted as a single unit, the area to be consolidated necessarily is disenfranchised *per se.*** It may as-well not vote either way.

If the area to be consolidated is counted separately, then it will have an appropriate option regarding whether or not to be part of the consolidation.

If the constitutionally-defective Plan existing today is the object to be voted-on, then of course the area to be annexed in the "new" District would sensibly-reject joining into consolidation.

Section 57075.5, Government Code, permits voters within an area to be "annexed" into a consolidated area to **vote as a separate unit in favor or not,** in a "city of more than 100,000 residents [ ] in a county with a population of over 4,000,000".

I believe the City should count the vote separately for the area to be consolidated, and if not more than the required margin is achieved the area should be withdrawn from the new B I D.

Only by adopting the above could the City claim the proposed annexation is not hostile and not disenfranchising.

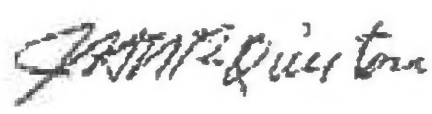
The foregoing is not all of what is undesirable and unconstitutional with respect to enacting the "new" Hollywood Media B I D with the given-set of unconstitutional documents.

But it is more than sufficient for the City to insist that the Plan be amended substantially before it may be approved.

The City cannot afford to lose its industrial Media entrepreneurs. Atlanta and Vancouver among others will get them if the B I D continues its course as-is.

Mark my "expert" words.

Respectfully submitted,



J. H. McQuiston, P.E. #6091

Owner of APN 5532-030-008
(1035 North Orange Drive)

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Encl *Santa Clara,* with law commentaries

Filed 7/14/08. Superior Ct. Nos. 1-02-CV804474 and 1-03-CV000705

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OPINION

CHIN, J.

In 1996, Proposition 218[1] limited local government's ability to impose real property assessments in two significant ways. An assessment can be imposed only for a "special benefit" conferred on real property (art. XIII D, § 2, subd. (b)), and the assessment on any parcel must be in proportion to the special benefit conferred on the particular parcel. (Art. XIII D, § 4, subd. (a))

In 2001, the Santa Clara County Open Space Authority (OSA) imposed a countywide assessment to fund a program to acquire, improve, and maintain unspecified open space lands in the county. Plaintiffs sued, challenging that assessment on the grounds that it fails to satisfy the special benefit and proportionality requirements of Proposition 218.

To decide whether OSA's 2001 assessment violates article XIII D, we must first determine the appropriate standard of judicial review of a local governmental agency's assessment determination. We conclude that Proposition 218 requires courts to make an independent review of local agency decisions that are governed by express constitutional provisions, as in this case, and that OSA's assessment does not comply with the special benefit and proportionality requirements of article XIII D.

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[1] Article XIII D of the California Constitution (article XIII D).

I. FACTUAL AND PROCEDURAL HISTORY

A. The Creation of OSA and the 1994 Special Assessment District

In 1992, the Santa Clara County Open-Space Authority Act (Pub. Res. Code, § 35100 et seq.) created OSA, with the express purpose of acquiring and preserving open space within the county to counter the conversion of land to urban uses, to preserve quality of life, and to encourage agricultural activities. (Pub. Res. Code, § 35101, subd. (a).) The act provides no particular method to fund open space acquisitions, but it authorizes OSA to levy special assessments under the Streets and Highways Code. (Pub. Res. Code, § 35173.) OSA's jurisdiction included all Santa Clara **438** County lands except those already within the boundaries of the Midpeninsula Regional Open-Space District.

In 1994, OSA formed an original assessment district under the authority of the Landscape and Lighting Act of 1972 (LLA).[2] (Sts. & Hy. Code, § 22500 et seq.) OSA levied an annual special assessment on the district's property owners to acquire and preserve open space land under the LLA's procedures. Certain taxpayers challenged the 1994 assessment, but the Court of Appeal upheld it. The 1994 assessment raised approximately $4 million annually and allowed OSA to purchase thousands of acres of open space lands.[3]

B. The Creation of the 2001 Assessment District and the Passage of Proposition 218

In 2000, OSA determined that it needed additional annual funding to purchase open space. To raise these additional funds, OSA considered forming an additional assessment district. However, in 1996, California voters had passed Proposition 218 to "significantly tighten the kind of benefit assessments" an agency can levy on real property (Ballot Pamp., Gen. Elec. (Nov. 5, 1996) argument in favor of Prop. 218, p. 76) and to "protect[] taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent." (Ballot Pamp., Gen. Elec., supra, text of Prop. 218, § 2, p. 108, reprinted in Historical Notes, 2A West's Ann. Const. (2008 supp.) foll. Cal. Const., art. XIII C, p. 85 (Historical Notes).)

To achieve these goals, Proposition 218 tightened assessment requirements and definitions, imposed stricter procedures on agencies, and shifted traditional presumptions that had favored assessment validity. (Art. XIII D, §§ 2, subd. (i), 4.) Under Proposition 218's procedures, local agencies must give the record owners of all assessed parcels written notice of the proposed assessment, a voting ballot, and a statement disclosing that a majority protest will prevent the assessment's passage. (Art. XIII D, § 4, subds. (c), (d).) The proposed assessment must be "supported by a detailed engineer's report." (Art. XIII D, § 4, subd. (b).)

At a noticed public hearing, the agencies must consider all protests, and they "shall not impose an assessment if there is a majority protest." (Art. XIII D, § 4, subd. (e).) Voting must be weighted "according to the proportional financial obligation of the affected property." (Ibid.)[4] **439**

OSA explored the possibility of creating a second assessment district that would comply with the new provisions of Proposition 218. As a first step, the OSA Board of Directors (OSA Board) authorized a poll of Santa Clara County property owners to determine whether they would support an assessment to fund the purchase of additional open space. The poll showed that approximately 55 percent of property owners would likely support up to a $20 per year property tax

increase for acquiring and maintaining open space lands.

The OSA Board hired Shilts Consultants, Inc. (SCI) to prepare the engineer's report. That report stated that the assessment would fund the "[a]cquisition, installation, maintenance and servicing" of open space lands for recreation, conservation, watersheds, easements, and similar purposes. Although the SCI report identified areas OSA was considering for potential acquisition and

improvement and outlined general considerations OSA would use to identify and acquire open space lands, it identified no particular parcels to be acquired and no

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[2] An " '[a]ssessment district' means the district of land to be benefited by the improvement and to be specially assessed to pay the costs and expenses of the improvement and the damages caused by the improvement." (Sts. & Hy. Code, § 10008.)

[3] The 1994 special assessment is not at issue in this case.

[4] In 1997, the Legislature codified and detailed the notice, hearing, and protest procedures in the Proposition 218 Omnibus Implementation Act. (Gov. Code § 53750 et seq., added by Stats. 1997, ch. 38, § 5.) These statutory provisions expressly supersede any others that apply to the levy of a new assessment. (Gov. Code § 53753, subd. (a).) These procedures are incorporated by reference into the LLA. (Sts. & Hy. Code, § 22588.)

particular areas to be prioritized.

The proposed 2001 assessment district included all Santa Clara County lands that were in the 1994 assessment district. The proposed assessment district included approximately 314,000 parcels and over 800 square miles containing over 1,000,000 people. The SCI engineer's report identified the special benefits that would accrue to the assessed parcels, estimated the proportion of all the benefits that could be considered special, set the assessment for a single-family home at $20 per year, and provided a formula for estimating the proportionate special benefit that other property on the tax rolls would receive. Using the $20 property tax increase per single-family home, the SCI engineer's report calculated that the assessment would produce an approximately $8 million increase in OSA's budget.

The OSA Board accepted and filed the engineer's preliminary report and authorized an assessment ballot proceeding. On September 1, 2001, OSA mailed an informational pamphlet to all of the approximately 314,000 property owners within the proposed district. The pamphlet described the assessment district and OSA's goal of raising about $8 million annually to acquire open space lands within the county.

On September 14, 2001, OSA mailed a notice of the proposed assessment and an official ballot to all affected property owners. On October 25, 2001, OSA conducted an informational meeting, at which OSA's general manager **440** and special counsel and a representative from SCI responded to numerous questions from the public. The formal public hearing was held on November 8, 2001. On December 13, 2001, OSA reported the results of the balloting at a public hearing. Of the approximately 314,000 official ballots mailed, OSA received only 48,100 responses, a return of approximately 15 percent. Of those responses, 32,127 (66.8 percent) voted in favor of the assessment, while the rest voted "no" (33.2 percent). The returned ballots were weighted in proportion to the amount each parcel was to be assessed, making the final tally 50.9 percent in favor and 49.1 percent opposed. Plaintiff Silicon Valley Taxpayers Association (SVTA) objected to the results on procedural grounds no longer relevant to the issues raised here. The final engineer's report, which was before OSA at the December meeting, contained some changes from the draft report filed in September. In particular, the final report emphasized that the "overriding" and "most important" criterion for OSA to use in acquiring open space was that the acquired lands be distributed throughout OSA's jurisdiction. At the conclusion of the December hearing, the OSA Board approved the results, accepted the final engineer's report and established the new assessment district.

A year and a half later, the OSA Board renewed the assessment for 2003- 2004 and added a cost-of-living increase of $0.34 per parcel.

C. Procedural History

SVTA, Howard Jarvis Taxpayers Association, and several individual taxpayers (collectively plaintiffs) filed this action for a writ of mandate, declaratory relief, and an injunction seeking to invalidate the 2001 assessment. Plaintiffs' second amended complaint contains two causes of action: the first alleges that OSA's notice and balloting procedures did not comport with Proposition 218 and the Government Code; the second challenges the substantive validity of the assessment under Proposition 218 and the Landscaping and Lighting Act.

The parties filed cross-motions for summary judgment or, in the alternative, summary adjudication. The court issued an order granting summary adjudication in favor of OSA on the second cause of action.

After the OSA Board renewed its assessment for the 2003-2004 fiscal year, plaintiffs filed a second lawsuit challenging that assessment. The new complaint contained allegations similar to those in the original lawsuit and added claims contesting the increase in the new assessment. The two cases were then consolidated. The court issued an order granting summary adjudication **441** in OSA's favor on the remaining causes of action. Based on that order and the previous order in the first lawsuit, the court entered judgment in favor of OSA.

In a two-to-one decision, the Court of Appeal affirmed the trial court's judgment. The majority held that Proposition 218 had altered the traditionally deferential standard of review by eliminating the presumption that an assessment was valid. Nevertheless, the majority held that courts should still accord the final legislative determination substantial deference, as long as the agency had followed Proposition 218's procedural requirements in levying the challenged assessment, and as long as substantial evidence in the administrative record supported the agency's finding that the benefits were special. Using this limited scope of review, the majority determined that the engineer's report supported OSA's determination of special benefits and

proportionality.

In her dissent, Justice Bamattre-Manoukian disagreed with the majority regarding the standard of review. In her view, the drafters of Proposition 218 had specifically targeted the deferential standard of review for change. Because the validity of a post-Proposition-218 assessment is now a constitutional question, she asserted that courts should exercise independent judgment in determining whether an assessment complies with article XIII D's procedural and substantive requirements. The dissent independently analyzed the engineer's findings concerning special benefits and proportionality and concluded that the identified benefits did not comply with Proposition 218's legal requirements.

We granted plaintiffs' petition for review.

II. DISCUSSION

Plaintiffs contend that because state constitutional provisions now govern assessments, courts should apply an independent standard of judicial review to determine their validity. They claim that, in this case, the $20 flat-rate levy is an invalid assessment because it fails to satisfy several provisions of article XIII D, section 4, and that the levy is in essence a "special tax." They argue further that, because OSA neither sought nor obtained the mandatory two-thirds voter approval for a special tax as required by Proposition 13, the $20 flat-rate levy violates both Propositions 13 (Cal. Const., art. XIII A) and 218. In discussing these claims, we first discuss the nature of special assessments before the enactment of Proposition 218, their relationship to Proposition 13 taxes, and how Proposition 218 changed the law governing assessments.

As explained below, we agree with plaintiffs' contentions. **442**

We explained the nature of a special assessment in *Knox v. City of Orland* (1992) 4 Cal.4th 132, (*Knox*), a **pre-Proposition 218** case. A special assessment is a " ' " 'compulsory charge placed by the state upon real property within a pre- determined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein . . . .' "[Citation.]' [Citation.] In this regard, a special assessment is 'levied against real property particularly and directly benefited by a local improvement in order to pay the cost of that improvement.' [Citation.] 'The rationale of special assessment[s] is that the assessed property has received a special benefit over and above that received by the general public. The general public should not be required to pay for special benefits for the few, and the few specially benefited should not be subsidized by the general public. [Citation.]' [Citation.]. . . . "A tax, on the other hand, is very different. Unlike a special assessment, a tax can be levied ' "without reference to peculiar benefits to particular individuals or property." ' [Citations.] Indeed, '[n]othing is more familiar in taxation than the imposition of a tax upon a class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied.' [Citations.]. . . .

"Therefore, while a special assessment may, like a special tax, be viewed in a sense as having been levied for a specific purpose, a critical distinction between the two public financing mechanisms is that a special assessment must confer a special benefit upon the property assessed beyond that conferred generally." (*Knox, supra*, 4 Cal.4th at pp. 141-142.)

We explained the history of Proposition 218 in *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830 (*Apartment Assn.*): " 'Proposition 218 can best be understood against its historical background, which begins in 1978 with the adoption of Proposition 13. "The purpose of Proposition 13 was to cut local property taxes. [Citation.]" [Citation.]

Its principal provisions limited ad valorem property taxes to 1 percent of a property's assessed valuation and limited increases in the assessed valuation to 2 percent per year unless and until the property changed hands. (Cal. Const., art. XIII A, §§ 1, 2.)

" 'To prevent local governments from subverting its limitations, Proposition 13 also prohibited counties, cities, and special districts from enacting any special tax without a two-thirds vote of the electorate. (Cal. Const., art. XIII A, § 4; *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 6-7 [2 Cal.Rptr. 2d 490, 820 P.2d 1000].) It has been held, however, that a special assessment is not a special tax within the meaning of Proposition 13. (*Knox v. City of Orland* (1992) 4 Cal.4th 132, 141 [14 Cal.Rptr.2d 159, 841 P.2d 144], and cases cited.) Accordingly, a special assessment could be imposed without a two-thirds vote. **443**

" 'In November 1996, in part to change this rule, the electorate adopted Proposition 218, which added articles XIII C and XIII D to the California Constitution. Proposition 218 allows only four types of local property taxes:

(1) an ad valorem property tax;
(2) a special tax;
(3) an assessment; and
(4) a fee or charge. (Cal. Const., art. XIII D, § 3, subd. (a)(1)-(4); see also [id.], § 2, subd. 9 (a).)

It buttresses Proposition 13's limitations on ad valorem property taxes and special taxes by placing analogous restrictions on assessments, fees, and charges.' (*Howard Jarvis Taxpayers Assn. v. City of Riverside* (1999)] 73 Cal.App.4th 679, 681-682.)" (*Apartment Assn., supra*, 24 Cal.4th at pp. 836-837.)

Proposition 218 restricts government's ability to impose assessments in several important ways.

First, it tightens the definition of the two key findings necessary to support an assessment: special benefit and proportionality. An assessment can be imposed only for a "special benefit" conferred on a particular property. (Art. XIII D, §§ 2, subd. (b), 4, subd. (a).) A special benefit is "a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large." (Art. XIII D, § 2, subd. (i).) The definition specifically provides that "[g]eneral enhancement of property value does not constitute 'special benefit.' " (Ibid.)

Further, an assessment on any given parcel must be in proportion to the special benefit conferred on that parcel:

"No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel." (Art. XIII D, § 4, subd. (a).) "The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property-related service being provided." (Ibid.)

Because only special benefits are assessable, and public improvements often provide both general benefits to the community and special benefits to a particular property, the assessing agency must first "separate the general benefits from the special benefits conferred on a parcel" and impose the assessment only for the special benefits. (Art. XIII D, § 4, subd. (a).)

Second, as described above, Proposition 218 established strict procedural requirements for the imposition of a lawful assessment. (Ante, at pp. 3-4.)

A. Standard of Review

Before Proposition 218 was passed, courts reviewed quasi-legislative acts of local governmental agencies, such as the formation of an assessment district, under a deferential abuse of discretion standard. (*Knox, supra*, 4 Cal.4th at pp. 145-149; *Dawson v. Town of Los Altos Hills* (1976) 16 Cal.3d **444** 676, 684-685 (*Dawson*).) Because it was recognized that "the establishment of a special assessment district takes place as a result of a peculiarly legislative process grounded in the taxing power of the sovereign," the scope of judicial review of such actions was "quite narrow." (*Dawson, supra*, at pp. 683-684; id. at p. 684 [" 'The board of supervisors is the ultimate authority which is empowered to finally determine what lands are benefitted and what amount of benefits shall be assessed against the several parcels benefitted . . . .' "].)

Accordingly, the standard of review was as follows: "A special assessment finally confirmed by a local legislative body in accordance with applicable law will not be set aside by the courts unless it clearly appears on the face of the record before [the legislative] body, or from facts which may be judicially noticed, that the assessment as finally confirmed is not proportional to the benefits to be bestowed on the properties to be assessed or that no benefits will accrue to such properties." (*Dawson, supra*, 16 Cal.3d at p. 685; *see also Knox, supra*, 4 Cal.4th at p. 146.) Under the *Dawson/Knox* standard of review, courts presumed an assessment was valid, and a plaintiff challenging it had to show that the record before the legislative body "clearly" did not support the underlying determinations of benefit and proportionality. (*See also Lent v. Tillson* (1887) 72 Cal. 404, 429 [judicial interference is warranted only "when the courts can plainly see that the legislature has not really exercised this judgment at all, or that manifestly and certainly no such benefit can or could reasonably have been expected to result"].)

The **drafters of Proposition 218 specifically targeted this deferential standard of review for change**. Article XIII D, section 4, subdivision (f), provides:

"In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits

conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question." In determining the effect of article XIII D, section 4, subdivision (f), we apply the familiar principles of constitutional interpretation, the aim of which is to "determine and effectuate the intent of those who enacted the constitutional provision at issue." (*Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 418.)

"The principles of constitutional interpretation are similar to those governing statutory construction." (*Thompson v. Department of Corrections* (2001) 25 Cal.4th 117, 122.) If the language is clear and unambiguous, the plain meaning governs. (*People v. Lopez* (2003) 31 Cal.4th. 1051, 1056.) But if the language is **445** ambiguous, we consider extrinsic evidence in determining voter intent, including the Legislative Analyst's analysis and ballot arguments for and against the initiative. (*People v. Canty* (2004) 32 Cal.4th 1266, 1281; *People v. Rizo* (2000) 22 Cal.4th 681, 685.)

Article XIII D, section 4, subdivision (f), states that the agency has the burden of demonstrating special benefit and proportionality in any legal action contesting the validity of any assessment. Although it is clear that the voters intended to reverse the usual deference accorded governmental action and to reverse the presumption of validity by placing the "burden" on the agency, the **provision does not specify the scope of that burden.** Because the language imposing a "burden" on the agency is somewhat imprecise, **we look to the ballot materials** as further indicia of voter intent.

The Legislative Analyst explained to the voters that Proposition 218 was designed to "constrain local governments' ability to impose . . . assessments . . . ." and to "place extensive requirements on local governments charging assessments." (*Ballot Pamp., Gen. Elec., supra*, analysis of Prop. 218 by the Legis. Analyst, p. 73.) Addressing the burden of demonstration language of proposed article XIII D,
section 4, subdivision (f), the Legislative Analyst explained: "Currently, the courts allow local governments significant flexibility in determining fee and assessment amounts. In lawsuits challenging property fees and assessments, the taxpayer generally has the 'burden of proof' to show that they are not legal. This measure **shifts the burden of proof in these lawsuits to local government**. As a result, it would be easier for taxpayers to win lawsuits, resulting in reduced or repealed fees and assessments." (*Ballot Pamp., Gen. Elec., supra*, at p. 74.) Or stated another way, Proposition 218 was intended to make it more difficult for an assessment to be validated in a court proceeding.

As the dissent below points out, a provision in Proposition 218 shifting the burden of demonstration was included in **reaction to our opinion** in *Knox*. The drafters of Proposition 218 were clearly aware of *Knox* and the deferential standard it applied based on *Dawson, supra*, 16 Cal.3d 676. The argument in favor of Proposition 218 referred to a "growing list of assessments imposed without voter approval" after Proposition 13 that are in fact special taxes. As one example of several named abuses of the assessment process, it specified that "[i]n Northern California, taxpayers 27 miles away from a park are assessed because their property supposedly benefits from that park." (*Ballot Pamp., Gen. Elec., supra*, argument in favor of Prop. 218, p. 76.) The reference to 27 miles was based on the facts of *Knox*, which involved an assessment to raise funds to maintain five existing parks serving four school districts. We upheld the assessment, deferring to the City of Orland's **446** determination that the property owners were "uniquely benefitted by the proximity of these facilities to their properties" (*Knox, supra* 4 Cal.4th at p. 149), although the assessment district contained 42,300 acres of land and geographically consisted of the entire city and portions of outlying areas in Glenn County. (Id. at p. 137, fn. 5.)

Also, in *Knox*, we declined a request to reevaluate the *Dawson* deferential standard of review for special assessments, finding "no basis" for requiring the assessing agency to bear the burden of proof "in the context of benefit assessments." (*Knox, supra*, 4 Cal.4th at p. 147.) The *Knox* plaintiffs argued that, as in *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.* (1985) 165 Cal.App.3d 227, 235, the local agency should bear the burden of proof in establishing the validity of a special assessment, and we should reassess the traditional standard of review that we reaffirmed in *Dawson. (Knox, supra*, 4 Cal.4th at pp. 146-147.)

In rejecting the argument, we distinguished benefit assessments from the development fees in *Beaumont*, noted the different statutory contexts, and refused to change the deferential standard of review. (Ibid.) Thus, it appears that the inclusion of the burden of demonstration language was intended to supply the "basis" found lacking in *Knox*, and that the drafters of Proposition 218 particularly targeted *Knox*.

As further evidence that the voters sought to curtail local agency discretion in raising funds, Proposition 218's preamble includes an express statement of purpose: "The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent." (*Ballot Pamp., supra*, text of Prop. 218, § 2, p. 108; *Historical Notes, supra*, p. 85; *People v. Canty, supra*, 32 Cal.4th at p. 1280 ["In considering the purpose of legislation, statements of the intent of the enacting body contained in a preamble, while not conclusive, are entitled to consideration"].) In passing Proposition 218, the voters clearly sought to limit local government's ability to exact revenue under the rubric of special assessments.

The Court of Appeal majority below recognized that the voters intended to change the deferential standard of review: "[B]y placing the burden to demonstrate special benefit and proportionality on the agency the new law must now require that which *Lent* held was not necessary, i.e., that the record contain affirmative evidence of the two substantive bases for the assessment." **447** Nevertheless, the majority maintained that courts should continue to give deference to the local agency's assessment decision (an act of a legislative body) for two reasons.

First, "the constitutional separation of powers demands that we give it deference. (Cal. Const., art. III, § 3; [citations].)"

Second, if the challenged assessment was levied according to Proposition 218's procedural requirements, courts will continue to accord the final legislative determination substantial deference. Otherwise, "invalidating an assessment that received the support of a majority of the property owners would frustrate the will of those property owners."

The majority concluded that the scope of judicial review was "limited." Accordingly, the majority stated the new standard of review as follows: "A special assessment finally confirmed by a local legislative body in accordance with applicable law will not be set aside by the courts so long as the local legislative body demonstrates, by reference to the face of the record before that body, that the property or properties in question will receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question. In all other respects, such an assessment shall not be set aside by the courts unless it clearly appears on the face of the record before the legislative body, or from facts which may be judicially noticed, that the assessment constitutes a manifest abuse of discretion."

Under the majority's standard, an assessing agency's determinations regarding whether benefits are special and proportional under the state Constitution must be affirmed if substantial evidence supports them. Although the substantial evidence standard is less deferential than the *Dawson/Knox* standard of review, it nevertheless is still highly deferential. (*Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429 [power of appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, to support conclusions below]; *Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660 [reviewing court views the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor].) The majority's choice of the deferential substantial evidence standard comported with its emphasis on the constitutional separation of powers doctrine, the legislative character of the assessment determinations at issue, and the consent of the weighted majority of property owners in the district.

However, a valid assessment under Proposition 218 must not only be approved by a weighted majority of owners under the procedural requirements in article XIII D, section 4, subdivisions (c), (d), and (e), but must also **448** satisfy the substantive requirements in section 4, subdivision (a). (Art. XIII D, § 4, subds. (a), (c)-(e).) These substantive requirements are contained in constitutional provisions of dignity at least equal to the constitutional separation of powers provision. (Cal. Const., art. III, § 3.)

Before Proposition 218 became law, special assessment laws were generally statutory, and the constitutional separation of powers doctrine served as a foundation for a more deferential standard of review by the courts. But after Proposition 218 passed, **an assessment's validity, including the substantive requirements, is now**

a constitutional question. "There is a clear limitation, however, upon the power of the Legislature to regulate the exercise of a constitutional right." (*Hale v. Bohannon* (1952) 38 Cal.2d 458, 471.)

" '[A]ll such legislation must be subordinate to the constitutional provision, and in furtherance of its purpose, and must not in any particular attempt to narrow or embarrass it.' " (Ibid.) Thus, a **local agency acting in a legislative capacity has no authority to exercise its discretion in a way that violates constitutional provisions or undermines their effect.**

We " ' "must . . . enforce the provisions of our Constitution and 'may not lightly disregard or blink at . . . a clear constitutional mandate.' " ' " (*State Personnel Bd. v. Department of Personnel Admin.* (2005) 37 Cal.4th 512, 523.) In so doing, we are obligated to construe constitutional amendments in a manner that effectuates the voters' purpose in adopting the law. (*Howard Jarvis Taxpayers Assn. v. City of Salinas* (2002) 98 Cal.App.4th 1351, 1355.) **Proposition 218 specifically states that "[t]he provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent**." (*Ballot Pamp., supra*, text of Prop. 218, § 5, p. 109; *Historical Notes, supra*, p. 85.)

Also, as discussed above, the ballot materials explained to the voters that Proposition 218 was designed to:
constrain local governments' ability to impose assessments;
place extensive requirements on local governments charging assessments;
shift the burden of demonstrating assessments' legality to local government;
make it easier for taxpayers to win lawsuits; and
limit the methods by which local governments exact revenue from taxpayers without their consent.

Because Proposition 218's underlying purpose was to limit government's power to exact revenue and to curtail the deference that had been traditionally accorded legislative enactments on fees, assessments, and charges, a more rigorous standard of review is warranted. We construe article XIII D, section 4, subdivision (f) -- the "burden . . . to demonstrate" provision — liberally in light of the proposition's other provisions, and conclude that courts should exercise their independent judgment in reviewing local agency decisions that have determined whether benefits are special and whether assessments are proportional to special benefits within the meaning of Proposition 218. (*Redevelopment Agency v. County of Los Angeles* (1999) **449** 75 Cal. App.4th 68, 74 [courts exercise independent judgment in matters involving constitutional interpretation]; *see People v. Cromer* (2001) 24 Cal.4th 889, 894 [courts use independent, *de novo* review for mixed questions of fact and law that implicate constitutional rights].)

Defendants argue that because a weighted majority of property owners approved the assessment, it furthers Proposition 218's emphasis on voter consent, and we should accord deference to those voting owners' wishes. However, **voter consent cannot convert an unconstitutional legislative assessment into a constitutional one**. Under Proposition 218, all valid assessments must both clear the substantive hurdles in article XIII D, section 4, subdivision (a) and be approved by a weighted majority of owners under section 4, subdivisions (c), (d), and (e).

Moreover, Proposition 218 was designed to prevent a local legislative body from imposing a special tax disguised as an assessment. (*Apartment Assn., supra*, 24 Cal.4th at p. 839 ["The ballot arguments identify what was perhaps the drafter's main concern: tax increases disguised via euphemistic re-labeling as 'fees,' 'charges,' or 'assessments' "].)[5] The judicial invalidation of an assessment does not thwart the objective of taxpayer consent; under Proposition 13, two-thirds of the voters must still approve the proposed revenue source (i.e., a special tax). (Cal. Const., art. XIII A, § 4; art. XIII D, § 3, subd. (a)(2).) Neither the separation of powers nor property owner consent justifies allowing a local legislative body or property owners (both bound by the state Constitution) to usurp the judicial function of interpreting and applying the constitutional provisions that now govern assessments.

Courts are familiar with the process of determining the constitutionality of the taxes, fees, and assessments that local governments impose. (*See Richmond v. Shasta Community Services Dist., supra*, 32 Cal.4th at pp.

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[5] The argument in favor of Proposition 218 stated: "After voters passed Proposition 13, politicians created a loophole in the law that allows them to raise taxes without voter approval by calling taxes 'assessments' and 'fees'. . . . [¶] . . . [¶] Proposition 218 will significantly tighten the kind of benefit assessments that can be levied." (Ballot Pamp., Gen. Elec., supra, argument in favor of Prop. 218, p. 76).) It also declared that "Proposition 218 simply give taxpayers the right to vote on taxes and stops politicians' end-runs around Proposition 13." (Ballot Pamp., Gen. Elec., supra, rebuttal to argument against Prop. 218, p 77.)

418-428 [determination whether charge that water district imposed violated article XIII D restrictions required *de novo* review]; *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2002) 97 Cal.App.4th 637, 647-650 [court found that in-lieu fee that city imposed was unconstitutional under article XIII D]; *Howard Jarvis Taxpayers Assn. v. City of Riverside, supra*, 73 Cal.App.4th 679, 684-690 [question whether existing streetlight assessment was subject to Proposition 218 limitations involved court's de novo interpretation of the constitution and voters' intent]; *Howard Jarvis* **450** *Taxpayers Assn. v. City of Salinas* (2002) 98 Cal.App.4th 1351, 1354-1359 [court independently interprets constitutional amendments contained in article XIII D to determine whether water fee was a property-related fee requiring property owners' vote]; *Graber v. City of Upland* (2002) 99 Cal.App.4th 424, 429 [question whether local ordinance violated constitutional provisions relating to tax increment financing was subject to de novo review].)

Accordingly, courts should exercise their independent judgment in reviewing whether assessments that local agencies impose violate article XIII D.[6]

B. The 2001 Special Assessment

We apply this standard of review to the special assessment in this case to determine whether OSA met its burden of demonstrating that the assessed properties received a special benefit and that the assessment is proportional to that special benefit.

1. Special Benefits

"Under Proposition 218, only special benefits are assessable. (Cal. Const., art. XIIID, § 4, subd. (a).) Local governments may not impose assessments to pay for the cost of providing a general benefit to the community. . . ." (*City of Saratoga v. Hinz* (2004) 115 Cal.App.4th 1202, 1223.) If a proposed project will provide both general benefits to the community and special benefits to particular properties, the agency can impose an assessment based only on the special benefits. It must separate the general benefits from the special benefits and must secure other funding for the general benefits. (Art. XIII D, § 4, subd. (a); *Hinz, supra*, 115 Cal.App.4th at p. 1223.)

Both before and after Proposition 218 passed, special assessments were distinguished from special taxes through the concept of special benefits. (*Knox, supra*, 4 Cal.4th at p. 142; *Ventura Group Ventures, Inc. v. Ventura Port Dist.* (2001) 24 Cal.4th 1089, 1106 (*Ventura Group Ventures*).) In *Knox*, we referred to a special benefit as a benefit " 'over and above that received by the general public.' " (*Knox, supra*, 4 Cal.4th at p. 142.) There, we presumed (in the absence of evidence to the **451** contrary) that the presence of well-maintained open park land contributed to the district's attractiveness and thus was a special benefit because it enhanced the desirability of the residential properties in that district. (*Knox, supra*, 4 Cal.4th at p. 149.)

Proposition 218 made several changes to the definition of special benefits. First, Proposition 218 defines a special benefit as "a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large," with the additional italicized requirement. (Art. XIII D, § 2, subd. (i), italics added.) Correspondingly, it emphasizes that "**[g]eneral enhancement of property value does not constitute 'special benefit.**' " (Ibid.) Since the "**[g]eneral enhancement of property value" is a "general benefit[] conferred on real property located in the district**" (ibid.), Proposition 218 clearly mandates that a **special benefit cannot be synonymous with general enhancement of property value**. Thus, Proposition 218 tightened the definition of special benefits and broadened the definition of general benefits to include benefits conferred generally "on real property located in the district." (Art. XIII D, § 2, subd. (i).)[7]

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[6] In Not About Water Com. v. Board of Supervisors (2002) 95 Cal.App.4th 982), the Court of Appeal held that courts review the creation of a special assessment district under an abuse of discretion standard (Id. at pp. 994-995), but at another point it references a substantial evidence standard (Id. at p. 986). We disapprove Not About Water Com. v. Board of Supervisors, supra, 95 Cal.App.4th 982, to the extent it is inconsistent with this opinion.

[7] OSA suggests that it can classify general benefits to parcels within the district as special benefits because benefit-to-property language is omitted from article XIII D, section 4, subdivision (f). That subdivision requires the agency "to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the [special] benefits conferred on the property or properties in question." (Art. XIII D, § 4, subd. (f).) OSA disregards the fact that section 4, subdivision (f), requires OSA to prove a proportional "special benefit" to each property as that term is defined in section 2, subdivision (i), which includes the benefit-to-property component. The additional reference in section 4, subdivision (f), to the "public at large" is surplusage, because that language is already included in section 2, subdivision (i)'s definition of "special benefit." (See Voters

Relying on *Harrison v. Bd. of Supervisors* (1975) 44 Cal.App.3d 852 (*Harrison*), the Court of Appeal majority below commented that "[i]f there is a significant difference between the two definitions [of special benefits before and after Proposition 218], we do not detect it." *Harrison* simply held that an increase in property value alone did not amount to a special benefit. (*Harrison, supra*, 44 Cal.App.3d at pp. 858-859.) This holding did not preclude a determination of special benefit based in part on the general enhancement of property value.

Moreover, while pre-Proposition 218 case law makes clear that assessments may not be levied for purposes of conferring purely general benefits, courts did not invalidate assessments simply because they provided general benefits to the public in addition to the requisite special benefits, and did not demand a strict separation of special and general benefits. (*See e.g., Knox,* **452** *supra*, 4 Cal. at pp. 137, 149 [upheld validity of assessment for park maintenance despite fact city did not separate general benefits to people outside area and to community at large from special benefits to residential parcels]; *Allen v. City of Los Angeles* (1930) 210 Cal. 235, 238 ["It would be well within the power of the city council to make the cost of the entire proceeding rest upon the shoulders of the property owners of a given district especially benefited thereby"]; *Federal Construction Co. v. Ensign* (1922) 59 Cal.App. 200, 210 (*Ensign*) ["To invalidate the assessment the general public benefit must be the only result of the improvement"; 100 percent of cost of new sewage treatment plant fully assessable notwithstanding general benefits]; *Cal.Jur.3d* (2003) Public Improvements, § 19, p. 90) ["For an assessment to be invalid because it confers a general public benefit, the general benefit must be the only result of the assessment"].)

Consequently, the **pre-Proposition 218 cases on which the Court of Appeal majority below and OSA relied are not instructive in determining whether a benefit is special under Proposition 218.** Instead, under the plain language of article XIII D, a **special benefit must affect the assessed property in a way that is particular and distinct from its effect on other parcels** and that **real property in general and the public at large do not share.**[8] (Art. XIII D, § 2, subd. (i).)

Our examination of the engineer's report supporting the assessments reveals that OSA has failed to meet its burden of demonstrating that the assessment is based only on the special benefits conferred on the particular parcel and is in proportion to those benefits. Various studies supported the listed benefits in the engineer's report. But, as discussed below, the report's **453** designation of these listed benefits as "special" failed to satisfy the constitutional requirements for assessments that fund open space acquisitions.

The engineer's report enumerates seven "special benefits" that the assessment will confer on all residents and property owners in the district:

(1) enhanced recreational activities and expanded access to recreational areas;
(2) protection of views, scenery, and other resources;
(3) increased economic activity;
(4) expanded employment opportunity;
(5) reduced costs of law enforcement, health care, fire prevention, and natural disaster response;
(6) enhanced quality of life and desirability of the area; and

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for Responsible Retirement v. Board of Supervisors (1994) 8 Cal.4th 765, 772-773.)

[8] OSA observes that Proposition 218's definition of "special benefit" presents a paradox when considered with its definition of "district." Section 2, subdivision (i) defines a "special benefit" as "a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large." (Art. XIII D, § 2, subd. (i), italics added.) Section 2, subdivision (d) defines "district" as "an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service." (Art. XIII D, § 2, subd. (d), italics added.) In a well-drawn district ù limited to only parcels receiving special benefits from the improvement ù every parcel within that district receives a shared special benefit. Under section 2, subdivision (i), these benefits can be construed as being general benefits since they are not "particular and distinct" and are not "over and above" the benefits received by other properties "located in the district."

We do not believe that the voters intended to invalidate an assessment district that is narrowly drawn to include only properties directly benefitting from an improvement. Indeed, the ballot materials reflect otherwise. Thus, if an assessment district is narrowly drawn, the fact that a benefit is conferred throughout the district does not make it general rather than special. In that circumstance, the characterization of a benefit may depend on whether the parcel receives a direct advantage from the improvement (e.g., proximity to a park) or receives an indirect, derivative advantage resulting from the overall public benefits of the improvement (e.g., general enhancement of the district's property values).

(7) improved water quality, pollution reduction, and flood prevention.

The report states that the benefit of "[e]nhanced recreational opportunities and expanded access to recreational areas" will be conferred on "all property owners, residents, employees and customers throughout the OSA" and that "[a]ll properties will benefit from the assessments . . . ." It explains that residential properties will benefit because "[t]hese improved open space areas will be available to residents and guests of property owners within the OSA, thereby making these properties more valuable," and that nonresidential properties will benefit because additional recreation areas available to employees will "enhance an employer's ability to attract and keep quality employees." The "enhanced economic conditions benefit the [nonresidential] property by making it more valuable." The report therefore acknowledges that all people in OSA's territory will benefit broadly, generally, and directly from the assessment, resulting in all properties receiving a derivative, indirect benefit.

Similarly, the report describes the second listed "special benefit" as benefiting everyone in the district generally ("[p]rotection of views, scenery and other resources values and environmental benefits enjoyed by residents, employees, customers and guests").

The report concludes that "[t]hese benefits ultimately accrue to properties because properties are more desirable in areas that offer environmental and economic benefits."

The report makes no attempt to tie this benefit to particular properties. Instead, it concludes that all properties throughout the district will receive this benefit equally. "Increased economic activity" and "[e]xpanded employment opportunity" are also listed in the report as "special benefits." Again, the report states that increased economic activity and expanded employment opportunity will result from the acquisition of additional open space because increased recreational opportunities will likely attract more people to the county. These people, in turn, will patronize county services and businesses, thereby fostering economic growth and "additional employment opportunities for OSA residents." The report broadly concludes that the increased economic **454** activity in the area is "a benefit ultimately to residential, commercial, industrial and institutional property." However, it simply assumes that the resultant increased economic activity will affect people and property throughout the county equally, but makes no direct connection to any particular properties.

The remaining listed "special benefits" do not satisfy the constitutional requirements either. Relying on various studies, the report claims that because open space and parks promote good health and reduce crime and vandalism, the county can expect a reduction in health care and law enforcement costs. It reasons that "[s]uch cost reduction frees public funds for other services that benefit properties," and "[a]ll of these factors ultimately benefit property by making the community more desirable and property, in turn, more valuable." The report also asserts that, because open space helps protect water quality and reduce flooding, the costs of public utility services for properties in the district will decrease.

Finally, the report emphasizes that open space areas will "enhance the overall quality of life and desirability of the area." All the listed benefits are general benefits in this case, shared by everyone ù all 1.2 million people ù living within the district. The report does not even attempt to measure the benefits that accrue to particular parcels. Indeed, the report describes OSA's mission, which is "[t]o preserve, protect and manage, for the use and enjoyment of all people, a well-balanced system of urban and non-urban areas of scenic recreational and agricultural importance." (Italics added.) OSA is responsible, as the report explains, "for preserving and maintaining open space for approximately 1.2 million people residing within its boundaries, representing over two-thirds of the population within Santa Clara County."

Although it is reasonable to conclude that quality-of-life benefits to people living in, working in, and patronizing businesses in the district will, in turn, benefit property in the district, such derivative benefits are only "general benefits conferred on real property located in the district or to the public at large." (Art. XIII D, § 2, subd. (i).) Moreover, to the extent that the value of property located in a desirable community is enhanced, this is a "[g]eneral enhancement of property value," and is thus, by definition not a special benefit. (Ibid.)

In addition, the report's description of general benefits fails to comport with the Constitution. The engineer's report acknowledges that the acquisition, maintenance and preservation of open spaces "provide a degree of general benefit to the public at large." But it then asserts that the ratio of general and special benefit that will be derived from OSA's open space acquisition program will be 10 percent general benefit and 90 percent special benefit, based on its determination that general benefit is measured only as **455** the benefit conferred on "individuals who are not residents, employees, customers or property owners" (italics added) in the

assessment district.

This distinction finds no support in the Constitution. Under article XIII D, general benefits are not restricted to benefits conferred only on persons and property outside the assessment district, but can include benefits both "conferred on real property located in the district or to the public at large." (Art. XIII D, § 2, subd. (i), italics added.) "At large" means "[n]ot limited to any particular . . . person" or "[f]ully; in detail; in an extended form." (*Black's Law Dict.* (8th ed. 2004) p. 136.) By its plain language, section 2, subdivision (i), does not permit OSA to choose one segment of the "public at large" to measure general benefit. The "public at large" thus means all members of the public ù including those who live, work, and shop within the district ù and not simply transient visitors.

The report assumes that people and property within the district — an area covering over 800 square miles, with a population of approximately 1.2 million people — will receive no general benefit at all, only special benefits, from OSA's acquisition of open space. But under these circumstances, "[i]f everything is special, then nothing is special." (*Ventura Group Ventures, supra*, 24 Cal.4th at p. 1107.)

Further, we note the validity of this assessment would be questionable even under the pre-Proposition 218 cases on which OSA relies. (*See e.g., Knox, supra*, 4 Cal.4th 132 [assessment valid for maintenance of five existing parks in four school districts in city]; *City of San Diego v. Holodnak* (1984) 157 Cal.App.3d 759 [assessment valid to fund parks and other public facilities located in new development]; *Ensign, supra*, 59 Cal.App. 200 [assessment valid to fund new sewer system].)

Unlike the assessment here, the assessments in the pre- Proposition 218 cases involved specific, identified improvements that directly benefited each assessed property and whose costs could be determined or estimated and then allocated to the properties assessed.

Also, in *Knox* and *Holodnak*, the properties assessed received special benefits from the particular park because of their proximity to park facilities. (*Knox, supra*, 4 Cal.4th at p. 149; *Holodnak, supra*, 157 Cal.App.3d at p. 763.)

Here, with a district of 314,000 parcels, OSA shows no distinct benefits to particular properties above those which the general public using and enjoying the open space receives. The special benefits, if any, that may arise would likely result from factors such as proximity, expanded or improved access to the open space, or views of the open space. (*See Ensign, supra*, 59 Cal.App. at p. 217 [property which is specially benefited is " 'real property adjoining, or near the locality of the improvement' "].) But, because OSA has not identified any specific open space acquisition or planned acquisition, it cannot show any **456** specific benefits to assessed parcels through their direct relationship to the "locality of the improvement." The improvement is only to OSA's budget for open space acquisitions.

Based on the undisputed facts in OSA's record (the engineer's report), OSA has failed to demonstrate that the properties in the assessment district receive a particular and distinct special benefit not shared by the district's property in general or by the public at large within the meaning of Proposition 218.

2. Proportionality

For an assessment to be valid, the properties must be assessed in proportion to the special benefits received: "No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel." (Art. XIII D, § 4, subd. (a).) "The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property-related service being provided." (Ibid., italics added.) Capital cost is defined as "the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency." (Art. XIII D, § 2, subd. (c), italics added.)

To satisfy the proportionality requirement, the engineer's report assigned all single-family homes in the district one single family equivalent (SFE) unit and assigned other types of property greater or lesser SFE's, depending on the estimated number of people using those properties. Condominiums received a lesser SFE because the average number of people per unit was estimated to be fewer than in an average single-family residence. Commercial properties received a higher SFE than single-family residences because greater numbers of people use them. Each SFE corresponded to an annual assessment of **$20, an amount a majority of property owners surveyed would be willing to pay**.

Because all single-family homes were assessed the same $20 amount, the engineer's report assumed that all single-family homes throughout the 800-square-mile district would receive an equal special benefit, regardless of their proximity to open space areas that might be acquired at some time in the future. The report contains no detailed analysis on how specific properties, blocks, school districts, or even cities would benefit from their proximity to open space. OSA contends that its assessment is nonetheless valid because it plans to acquire space equally throughout the district, and all properties will be equally close to and benefit from open space areas.

The engineer's report **457** lists 30 priority acquisition areas and identifies a number of other "potential acquisition and improvement areas." This, OSA claims, is sufficient to satisfy Proposition 218's proportionality requirement.

We disagree.

The report's proportionality analysis fails to satisfy Proposition 218 largely because the special assessment is based on OSA's projected annual budget of $8 million for its open space program rather than on a calculation or estimation of the cost of the particular public improvement to be financed by the assessment. The figure of $8 million was derived from the additional $20 per year in property taxes multiplied by the number of properties on the tax rolls in the district.

The $8 million collected for the assessment annually ù with an automatic cost-of-living increase ù provides a continuing source of revenue for OSA's budget. However, the **purpose of an assessment is to require the properties which have received a special benefit from a "public improvement" "to pay the cost of that improvement," and not to fund an agency's ongoing budget.** (*Ventura Group Ventures, supra*, 24 Cal.4th at p. 1106, italics added; *Knox, supra*, 4 Cal.4th at p. 142)

The engineer's report generally describes a program to acquire various properties throughout the county, as well as to provide maintenance and servicing of these public areas. Such future acquisitions include, but are not limited to, "greenbelts, hillsides, viewsheds and watersheds, baylands, riparian corridors, urban open space, parklands, agricultural lands, development rights on agricultural lands and other land-use types, conservation easements, other property rights, wetlands, utility right-of-ways, surplus school sites, [and] quarries."

OSA argues its goal is to acquire open space land that is evenly distributed throughout the district. Although the report lists 30 general priority acquisition areas, it further notes this list is not exclusive. The report identifies no particular parcels or specific area within the district that OSA plans to acquire for open space or parks.

Further, the engineer's report notes that OSA "should" complete at least one acquisition of open land every five years. Notably, OSA is not required to do so.

Thus, the report fails to identify with sufficient specificity the "permanent public improvement" that the assessment will finance, fails to estimate or calculate the cost of any such improvement, and fails to directly connect any proportionate costs of and benefits received from the "permanent public improvement' to the specific assessed properties. As the dissent below observed, "an assessment calculation that works backward by starting with an amount taxpayers are likely to pay, and then determines an annual spending budget based thereon, does not comply with the law governing assessments, either before or after Proposition 218."

As with its determination of special benefits, OSA has failed to demonstrate proportionality. Accordingly, we conclude that the assessment is invalid **458** for failing to meet the requirements of Proposition 218.

In light of this disposition, we need not reach the other arguments plaintiffs raise.

III. DISPOSITION

We reverse the judgment of the Court of Appeal and remand the matter to that court for further proceedings consistent with our opinion.

WE CONCUR:
GEORGE, C.J. KENNARD, J. BAXTER, J. WERDEGAR, J. MORENO, J. CORRIGAN, J.

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Petition Supreme Court reviewed after Court of Appeal affirmed civil judgment below.
Issues: (1) In a legal action contesting validity of an assessment under Cal. Constitution article XIIID, what standard of review should apply in reviewing agency determination that properties on which assessment is to be imposed will "receive a special benefit over & above benefits conferred on public at large & the amount of any contested assessment is proportional to & no greater than benefits conferred on the property(s)," as required by the constitutional provision? (art. XIII D(4)(f).)

(2) Can the benefit that future purchases of unidentified open space will confer upon everyone who lives or works in the assessment district be characterized as a "special benefit" to each parcel in district within the meaning of art. XIIID?

(3) Under art. XIIID, may the agency impose an identitical assessment on all similar district properties (e.g, all single-family residences) or must it calculate benefit/cost to each individual parcel?

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League Of Placer County Taxpayers (Amicus curiae);
Pomona Coalition For Better Government (Amicus curiae);
Sacramento County Taxpayers League (Amicus curiae);
Solano County Taxpayers Association (Amicus curiae);
United Organization Of Taxpayers (Amicus curiae);
Valley Taxpayers Coalition (Amicus curiae);
Ventura County Taxpayers Association (Amicus curiae); and
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Summary Comment:

A unanimous California Supreme Court ruled that courts must substantively review special tax assessments to determine if they pass a special benefits test and proportionality test, because Proposition 218 put those tests into the California Constitution explicitly. Because Proposition 218 was distinctively anti-tax, the government bears a very high burden of proving that the tax assessment passes the special benefits test and proportionality test. The government does not have a presumption of constitutionality; it must present detailed analysis with particularity to specific parcels of land.

Impact:

High impact. Local municipalities will face stricter standards when passing tax assessments They must gather more detailed information explaining how specific parcels of land benefit specifically from projects. Since the case, Oakland cancelled a scheduled tax assessment to avoid running afoul of this ruling. Stockton and Tiburon also faced challenges immediately following the ruling.

Facts:

SCOSA was created as a tax district to pay for open-space. SCOSA planned to raise $8 million to pay for open-space. SCOSA imposed a special tax assessment of $20 per single household in the district (the "Tax Assessment"). It held an election which approved the plan by a 50.9 to 49.1 margin.

SCOSA stated that the open-space would confer a special benefit for the district. The engineers report listed seven benefits conferred by the open-space projects:
(1) enhanced recreational activities and expanded access to recreational areas;
(2) protection of views, scenery, and other resources;
(3) increased economic activity;
(4) expanded employment opportunity;
(5) reduced costs of law enforcement, health care, fire prevention, and natural disaster response;
(6) enhanced quality of life and desirability of the area; and
(7) improved water quality, pollution reduction, and flood prevention.

Also, SCOSA planned to distribute the open-space throughout the district. Therefore, a flat $20 fee was appropriate.

Case Arguments:

Taxpayers challenged the tax:

ò The SCOSA Tax Assessment violates the California Constitution.

ò Proposition 218 states that the government may only impose a special tax assessment if it meets the following two tests:

- o Special Benefit Test: Confers a special benefit on the property beyond a general benefit.
- o Proportional Test: Is proportional to the value of the special benefit conferred.

ò The SCOSA Tax Assessment violated the Constitution in both ways

- o It did not confer a special benefit on the households in question, only a general benefit.
- o It charged a fixed fee without tying the fee to the special benefit conferred or the costs of supplying the special benefit.

SCOSA responds:

ò Because it is a tax issue, judges should be very deferential to the legislature and the democratic process. The Tax Assessment passed with popular support.

ò Judges should only perform procedural review, not substantive review of the tax assessment. Proposition 218 does not explicitly require the court to substantively review the tax assessment. Therefore, the courts should keep their deferential standard. The SCOSA followed constitutionally required procedures; therefore the OSA Tax Assessment is constitutionally valid.

ò Even if the California Supreme Court does substantively review the decision, the benefits listed pass the special benefits test and imposing a $20 regular rate pass the proportionality test.

Case Issues:

Can the court substantively review a special tax assessment under Proposition 218?

Did the Santa Clara OSA Tax Assessment meet the requirements of a special benefit and proportionality required by Proposition 218?

Court Holding:

Yes, the court can and must substantively review tax assessments.

No, the Santa Clara OSA Tax Assessment did not meet either the special benefit or the proportionality requirement.

Therefore, the Tax Assessment was invalid.

Court New Rule:

Courts must substantively review special tax assessments to determine if the government actually meets the special benefit and proportionality requirements of Proposition 218, **because Proposition 218 altered the California Constitution.**

To meet the special benefit test in Proposition 218, the **government must provide evidence and analysis demonstrating how each parcel benefits in particular**. **Simple broad claims are insufficient**.

To meet the proportional test in Proposition 218, the government must demonstrate how each particular parcel benefits from the special project and by how much.

Moreover, it must demonstrate specifically how much the special project costs and how it apportioned the cost by household. Simply charging all households a flat rate is insufficient.

Reasoning:

Prior to Proposition 218, Proposition 13 governed the constitutionality of local property taxes. Proposition 13 allowed local governments to impose special tax assessments to pay for those special benefits. In *Knox v. City of Orland*, 4 Cal. 4th 132, (Cal. 1992) the California Supreme Court defined a special tax assessment as a "compulsory charge placed by the state upon real property within a predetermined district [.]"

It further explained that "[t]he rationale of special assessments is that the assessed property has received a special benefit over and above that received by the general public."

However, Proposition 13 did not define either a special benefit or proportionality. Thus, there was no constitutional definition to guide courts. Legislatures made these determinations.

Prior to Proposition 218, the courts reviewed the legislature's determination of a special tax assessment under a deferential abuse of discretion standard. Courts were very deferential to the government when determining whether a public project conferred a special benefit or whether it was proportional. In *Knox*, the Court set the standard of review as follows:

"A special assessment finally confirmed by a local legislative body in accordance with applicable law will not be set aside by the courts unless it clearly appears on the face of the record before the body or, from facts which may be judicially noticed, that the assessment as finally confirmed is not proportional to the benefits to be assessed or that no benefits will accrue to such properties."

Proposition 218 directly challenged and reversed this deference. First, it formally defined special benefit and proportionality in the California Constitution. Therefore, there is far less room for deference to the legislature.

Additionally, Proposition 218 changed the court's standard of review. While not explicitly creating a new

standard of review, Proposition 218 clearly meant to limit the taxation power of local governments. According to the Court, "Because Proposition 218's underlying purpose was to limit government's power to exact revenue and to curtail the deference that had been traditionally accorded legislature enactments on fees, assessments, and charges, a more rigorous standard of review is warranted."

Accordingly, the Court held that "[We] conclude that courts should **exercise their independent judgment** in reviewing local agency decisions that have determined **whether benefits are special and whether assessments are proportional to special benefits** within the meaning of Proposition 218." Therefore, the California Supreme **Court would decide for itself whether the special tax assessment met the special benefit or proportionality test**.

The Santa Clara OSA **Tax Assessment failed both tests.**

First, the Court found that the Santa Clara government **did not provide any rigorous evidence** on whether a **special benefit** was conferred. As the Court states: "Proposition 218 clearly mandates that a **special benefit cannot be synonymous with general enhancement of property value.**"

In the Court's **unanimous opinion**, all of the listed benefits from open-space were general benefits, not special benefits.

Second, it **failed the proportionality test**. The Tax Assessment charged all single family homes a $20 per year fee, **irrespective of whether they were close to the open-space or received any special benefit**.

Since the **fee was not tailored to any special benefit or to the actual costs** of building the special projects, but **imposed evenly amongst all parties** in the district, it **could not be proportional**.

This is a **powerful case with significant impact** in California.

Prior to this ruling, the government enjoyed a *de facto* presumption in favor of a tax assessment's constitutionality. As such, it was very difficult to challenge the tax assessment's validity. Only procedural errors or clear abuse hurt the government's chances. Courts made a clear policy decision to limit their review to procedural issues only.

After this ruling, the **government faces far stricter standards**.

First, the courts now must review the tax assessment for special benefits and proportionality. Their analysis must expand beyond simple procedural issues.

Second, the **special benefits and proportionality tests are enforced with strong particularity**. Simply asserting that land "benefits" is no longer sufficient to claim a special benefit. The **government must provide specific analysis explaining how specific parcels of land benefit in particular**.

Moreover, the **government must detail, in particular, exactly how much the special project costs and apply those costs proportionally to the special benefits provided**.

Ultimately, **this opinion will have significant impact on local finance**.

California municipalities had been using special tax districts to pass *de facto* property tax increases to pay for environmental projects, such as open-space. Because these governments had a presumption of validity, **they did not perform specific, detailed analyses**.

Now these special tax assessments are under challenge and the **government's assertions face a much stronger burden of proof**.

Some special tax districts already reversed themselves. For example, Oakland reversed a special tax assessment after this case. Challenges were filed against tax assessments in the cities of Stockton and Tiburon. **Projects will become more expensive** and may cease altogether. **Special tax districts will lose favor and hurt public projects.**

It is **unlikely that the California Supreme Court will alter this ruling** much in the future. All seven justices ruled unanimously; there were no separate concurring opinions or dissents. New appointments will not likely alter the result, especially now that it has the strength of *stare decisis*.

Moreover, the agreed upon logic is fairly straightforward. Because the **special benefits and proportionality tests are explicitly defined in detail in the California Constitution**, courts must enforce those tests, even at

the cost of green-space. As such, there is little room to modify the ruling through litigation.

The only way to reverse this ruling would be to alter the California Constitution itself. However, this would prove difficult. The only thing that Californians like more than open-space is low property taxes.

(Above-Commentary Authored by Blake Bailey for Stanford Law Dept)

Related Media

Olson & Keys, "BIDs & Prop 218 After *Silicon Valley v Santa Clara County*", Public Law J, V31 No 4 (2008)

"Courts: State Supreme Court Strikes Down Santa Clara Property Assessment as Violation of Proposition 218," California Taxpayers' Association, Cal-Taxletter

"Big Legal Win for Taxpayers: Santa Clara Open Space Tax Struck Down," Howard Jarvis Taxpayers Association, July 14, 2008

Harold E. Johnson, "Property Owners Singled Out To Pay Illegal Tax Disguised as Special Benefit Assessment, Pacific Legal Foundation, July 2008

The Public Law Journal www.calbatca.gov/publiclaw Vol. 31, No. 4, Fall 2008

Business Improvement Districts and Proposition 218 After Silicon Valley Taxpayers Association v Santa Clara County Open Space Authority By Rebecca Olson & Lacey Keys

I. INTRODUCTION

In 1996 the voters passed Proposition 218, an initiative measure that amended the California Constitution to require local governments to hold a vote of the affected property owners before any proposed new or increased assessment could be levied, Notwithstanding this limitation, courts have historically shown deference towards local governments when adjudicating challenges to new or increased assessments. A recent California Supreme Court case, *Silicon Valley Taxpayers Association v. Santa Clara County Open Space Authority*, 44 Cal. 4th 431 (2008) marks a shift away from the court's traditional deferential posture and recognizes that local governments bear the burden of proving that new or proposed assessment will provide a special benefit proportional to the amount of property owned by those subject to it.

This article focuses on the impact that *Silicon Valley* is likely to have on the establishment of business improvement districts. The first part provides an overview of business improvement districts and briefly describes the history of the districts in California. The remainder of the article discusses *Silicon Valley* and its impact on future districts in the State, and offers practical guidelines for counsel advising potential business improvement districts.

II. OVERVIEW OF BUSINESS IMPROVEMENT DISTRICTS

A Business Improvement District (BID)[1] is created to raise money for neighborhood improvements and is established when a group of property owners decide by a majority vote to assess themselves.[2] The local government collects the assessment, along with other taxes, and then apportions assessment proceeds to the BID's operating organization.[3] BIDs are typically operated by a nonprofit organization, a quasi-public authority, or a mixed public-private enterprise.[4]

BIDs provide their community with various services, including capital improvements (e.g., installing pedestrian lighting and planting trees); consumer marketing (e.g., creating and publicizing local events); economic development in the form of incentives for new and expanding businesses; maintenance of streets, sidewalks and graffiti removal; managing public parking and transportation; promoting public policies beneficial to the district; supplementary security services (e.g., security guards and cameras); and some social services.[5]

BIDs engage in these types of activities based on their size, budget and organizational structure.[6]

A. PROS AND CONS

The impetus behind the development of BIDs was the dilapidated state of many urban centers.[7] In the 1960s local governments began to focus on social welfare and "turned their backs on the key missions of policing and sanitation"[8] As a result, customers fled to suburban shopping malls and urban businesses suffered.[9] BIDs sprang up as urban businesses' response to these issues. With their focus on security and cleanliness, BIDs can provide

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1. "Business Improvement District" is but one term for the type of entity discussed in this article. Other terms include special improvement district, public improvement district, and community benefit district, among others.

2. Heather Mac Donald, *Why Business Improvement Districts Work*, 4 Civic BULLETIN, Manhattan Inst. for Pol'y Res. (1996), available at http://www.manhattaninstitute.org/html/eb_4.htm.

3. Jerry Mitchell, *Business Improvement Districts and Innovative Service Delivery*, pg. 9. Available at http://www.businessofgovernment.org/pdfs/Mitchell.pdf.

4. Mitchell, supra note 3, at 7.

5. Id. at 18

6. Id. at 19.

7. Gordon Marshall, *Business Improvement Districts*, DICTIONARY OF SOCIOLOGY, (1998).

8. Mac Donald, supra note 2.

9. Id.

a unique private sector solution to public problems.

Many people view the development of B1Ds as a success because they provide cleaner, friendlier and safer urban areas.[10]They point to BID's potential to prioritize safety and cleanliness issues, and to the fact that they are not hampered by civil service rules and are able to negotiate labor contracts freely.[11]

Critics of BIDs suggest that the assessments are a second tax for services a city is already required to provide.[12] Other critics point to higher property values, which displace the poor and lead to gentrification.[13] Still others argue that BIDs effectively lead to harassment of the homeless.[14]

Despite these critiques, BIDs are credited with having helped clean up urban areas as large as New York City and as small as Burlingame, Maine.[15]

III. HISTORY OF BUSINESS IMPROVEMENT DISTRICTS IN CALIFORNIA

BIDs came to California with the Property and Business Improvement District Law of 1994.[16] Before 1994, the Parking and Business Improvement Area Law of 1989 permitted a city to establish a parking and business improvement area in order to levy benefit assessments on business owners for the purpose of funding certain enumerated improvements and activities.[17] The Downtown Economic Improvement Coalition sponsored the Property and Business Improvement District Law of 1994, because existing legislation did not assess property owners and did not authorize the business improvement areas to provide all the services necessary to improve urban centers. [18]

Therefore, the 1994 legislation supplements the 1989 legislation by authorizing the creation of districts to levy assessments on both business and property owners, and by expanding the services such districts could provide[19]

Proponents of the 1994 legislation pointed to reinvestment in downtown locations and local self-help as reasons for the legislation,[20] while opponents worried it was an attempt to circumvent Proposition 13's two-thirds vote requirement for a special tax.[21] However, the bill ultimately passed and was chaptered on September 27, 1994.

In 1996, California voters passed Proposition 218[22] to stop perceived abuses in the use of assessments, namely their use to raise revenue for general governmental services other than property-related services. [23] Proposition 218 thus imposed stricter requirements to establish a BID and assess property owners.

To establish a BID, the proponent(s) must follow a specific procedure including notice, public hearings and

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10. See, e.g.. Marshall, supra note 7; see also Erin Ailworth and William Wan, *Flak Over Downtown Security Guards*, LOS ANGELES TIMES, June 8, 2004 at B-1.

11. Mac Donald, supra note 2.

12. Id.

13. Marshall, supra note 7.

14. Ailworth, supra note 10.

15. http://www.mass.gov/Ehed/docs /dhcd/ed/bid/faq.doc

16. Cal, Str & Hwy. Code §36600, et seq. (West 2008).

17. Cal. Str. & Hwy. Code §36500. et seq. (West 2008).

18. AB Comm. on Local Gov't, at 6 (Apr. 20, 1994).

19. Id. at 1.

20. Id. at 7-8.

21. AB Root Analysis, at 6 (June 30, 1994).

22. Cal. Const. Art. XIIID.

23. Legislative Analysts Office, Understanding Proposition 218 (1996), available at http://www.lao.ca.gov/1996/120196_prop-_218/understanding_prop218_1296.html# chapter 1 (hereinafter LAO).

weighted voting.[24] The proposed BID and assessment also must he supported by a detailed engineer's report.[25] This procedure shifts power over local assessment to local property and business owners.[26]

To be valid, an assessment must meet two substantive requirements. [27] First, the BID must confer a special benefit on the assessed properties over and above those conferred on all properties in the district or on the public at large. [28] Proposition 218 makes clear that only special benefits are assessable, so general benefits must be separated and funded by alternative sources. Second, each parcel may only be assessed an amount proportional to the special benefit it receives. [29] The proportionate special benefit for a given parcel is determined "in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement or the cost of the property-related services being provided."[30]

Significantly, Proposition 218 places the burden of proving special benefit and proportionality on the proponents of a BID,[31] eliminating the prior presumption that an assessment was valid.[32]

Proposition 218 applies to local governments, which includes any county, city, city and county, including a charter city or county, any special district or any other local or regional governmental entity.[33] Special districts include redevelopment agencies, school districts and any other agency of the State for the local performance of governmental or proprietary functions with geographic boundaries.[34]

Proposition 218 expressly does not exempt from assessment properties owned or used by local, state or federal government.[35] To establish an exemption, a governmental entity must show that it receives no special benefit from the BID by clear and convincing evidence.[36]

IV. SILICON VALLEY TAXPAYERS ASSOCIATION V. SANTA CLARA COUNTY OPEN SPACE AUTHORITY

In *Silicon Valley Taxpayer's Association*, the California Supreme Court considered the validity of a 2001 assessment district created by the Santa Clara Open Space Authority (OSA).[37] OSA was established before the passage of Proposition 218 by the Santa Clara County Open-Space Authority Act to acquire and preserve open apace in the County.[38]

OSA's original assessment district was established in 1994 under the Landscape and Lighting Act of 1972.[39] In 2001, OSA determined additional funding was needed to establish additional open spaces and began adoption

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24. Cal. Coast. Art. XIIID, §4(c)-(e); see also Cal, Gov. Code § 53753 (West 2008).

25. Cal. Const. Art. XIIID, §(4)(b).

26. LAO, supra note 23.

27. Cal Const. Art. XIIID, §4.

28. Id. at §4(a).

29. Id.

30. Id.

31. Id at §4(f).

32. *Silicon Valley Taxpayers Association v. Santa Clara County Open Space Authority*, 44 Cal. 4th 431, 79 Cal. Rptr. 3d 312, 321 (2008).

33. Cal. Const. Art. XIIID, §§1(a), 4(a). See also Cal. Const. Art. XIIIC(1)(b).

34. Cal. Const. Art. XIIIC(1)(c).

35. Cal. Const. Art, XIIID, §4(a).

36, Id.

37. 79 Cal. Rptr. 3d (2008).

38. Id. at 318.

39. Id.

of a new assessment district.[40] OSA attempted. to follow the procedural requirements of Proposition 218 by providing notice, holding a public hearing, and weighting the votes.[41] The engineer's report listed seven "special benefits" that the assessment would confer on all residents and property owners in the district:

(1) enhanced recreational activities and expanded access to recreational areas;
(2) protection of views, scenery, and other resources;
(3) increased economic activity;
(4) expanded employment opportunity;
(5) reduced costs of law enforcement, health care, fire prevention, and natural disaster response;
(6) enhanced quality of life and desirability of the area; and
(7) improved water quality, pollution reduction, and flood prevention.[42]

The engineer's report set the assessment for a single family home at $20, based on OSAs survey regarding the amount property owners would be willing to assess themselves. OSA calculated the assessment would produce about 88 million annually for its budget.[43]

The new GSA assessment district passed and was established on December 31, 2001.[44]

Silicon Valley Taxpayers Association, Howard Jarvis Taxpayers Association and several individual taxpayers (collectively "plaintiffs") challenged the 2001 assessment district procedurally and substantively.[45]

After the OSA board renewed the district for 2003-2004, the plaintiffs challenged that action as well and the cases were consolidated.[46] The court granted OSA summary adjudication and entered judgment in favor of OSA.

The Court of Appeal affirmed, holding that although Proposition 218 eliminated the presumption that assessments are valid, courts should still accord the local government's determination substantial deference if Proposition 218's procedural requirements were followed and substantial evidence in the administrative record supported the finding that the benefits were special.[47]

A. NEW STANDARD OF REVIEW

The California Supreme Court revised and adopted a different standard of review: "courts should exercise their independent judgment in reviewing local agency decisions that have determined whether benefits are special and whether assessments are proportional within the meaning of Proposition 218."[48] In so doing, the Supreme Court relied on the plain language and history of Proposition 218.

The text of Proposition 218 provides, "in any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of nay contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question." Prior to the passage of Proposition 218, the courts exercised a deferential, abuse of discretion standard in adjudicating challenges to special benefit assessments of.[49] After Proposition 218 was passed, few cases dealt with the standard of review applicable to assessments.[50] However, the few courts that did address the issue upheld a local government's determination whether affected properties received a special benefit proportional to the assessment

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40. Id

41. Id. at 319.

42. Id at 330.

43. Id at 319.

44. Id.

45. Id.

46. Id. at 320.

47. Id.

48. Id. at 327-28.

49. Id. at 322.

50. See *Dahms v. Downtown Pomona Property and Business Improvement District* , 41 Cal. Rptr. 3d 196,199 (2d Dist. 2006).

so long as substantial evidence supported that determination.[51] This standard was highly deferential to local judgment.[52]

In *Silicon Valley Taxpayers Association*, the Supreme Court recognized that Proposition 218 was a response to the deferential standard used by the courts and was designed to shift the burden of proof to the proponents of an

assessment and to make it easier for taxpayers to win lawsuits.[53] The Court of Appeal in this case used a less deferential standard than the earlier abuse of discretion standard.

The Supreme Court held the lower court misinterpreted Proposition 218 by ignoring the substantive requirements of the proposition.[54] The court held that reviewing courts must undergo their own independent review under Proposition 218 to determine whether an assessment actually confers special benefits on assessed property owners and whether the amounts assessed are proportional to the benefits conferred.[55]

This decision marks a shift from the court's traditional deferential standard of review for special assessments. A local government establishing a BID must be more cognizant of the engineer's report and whether it adequately establishes special benefits to be received by each parcel.

Additionally the local government must determine whether the report adequately describes the nexus between each parcel's benefit and assessment. This fact may increase the costs of establishing a BID and may encourage opponents to challenge new BIDs. When a BID is challenged, it will he the local government's burden to prove a special benefit exists and that the assessment is proportional to the special benefit.

B. SPECIAL BENEFIT

Proposition 218 defines a "special benefit" as a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large and clarifies that general enhancement of property value does not constitute "special benefit."[56] In *Silicon Valley Taxpayers Association*, the court emphasized that Proposition 218 says general enhancement of property value does not constitute a "special benefit" and only special benefits are assessable.[57]

Prior to Proposition 218, courts did not invalidate assessments that conferred general benefits along with specific benefits and they did not require BIDs to separate the two.[58] The court opined that reliance on these pre-Proposition 218 cases was unwarranted because the California Constitution now explicitly requires otherwise.[59] Based on these principles, the OSA assessment was invalid because the benefits listed in the engineer's report were general benefits conferred on all parcels in the district.[60] Especially troublesome for the court was the report's failure to measure the benefits to particular parcels.[61]

Although not beneficial to OSAs district, the court noted "in a well-drawn district — limited to only parcels receiving special benefits from the improvement — every parcel within that district receives a shared special benefit."[62]

As the court did not believe voters meant to invalidate such a narrowly drawn district, it stated, "if an

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51. Id.

52. Id.

53. Id.

54. Id.

55. Id.

56. Cal. Const, Art. XIIID, §2(i).

57. *Silicon Valley Taxpayers Association*, 79 Cal. Rptr. 3d at 329.

58. Id.

59. Id.

60. Id. at 330.

61. Id

62. Id. at 329, n 8.

assessment is narrowly drawn the fact that a benefit is conferred throughout the district does not make it general rather than special."

This statement provides a safe haven for narrowly drawn districts and creates incentive to draw BIDs narrowly.

C. PROPORTIONALITY

With regard to the second substantive requirement, the court found OSA was not able to demonstrate proportionality.[63] The engineer's report assigned each property a single family equivalent (SFE) based on the number of people expected to use the property and a value of $20 to each SFE.[64] The report listed 30 priority acquisitions; however it did not ensure any of them would be made or that OSA would regularly make acquisitions. The court found this did not establish proportionality because it assumed all single-family homes would receive the same benefit, regardless of location in the district and proximity to open spaces.[65]

OSA argued its plan to acquire open spaces evenly throughout the district established proportionality. However, the court disagreed because the report failed to identify with sufficient specificity the permanent public improvement to he financed by the assessment, failed to estimate or calculate the cost of the improvement and failed to connect the costs and benefits of the improvements to the specific properties to be assessed.[66]

V. PRACTITIONER TIPS

A. DETAIL SPECIAL BENEFITS FOR SPECIFIC PARCELS

The district plan can consist of, but is not limited to, a description of the boundaries of the district, an outline of the service plan, a budget, the methodology of the assessment, a timeline, and a description of the future management of the district. Practitioners should advise their clients to carefully draft the assessment and assessment methodology portions of a plan to avoid hitting the pitfalls that gave rise to the Silicon Valley case.

A district plan should ensure it is demonstrating the provision of special benefits for the parcels in the district, and not just enhancing all properties generally. By breaking down the district itself into smaller benefit zones and

detailing how each zone will benefit from the services the district provides, a district can show it is providing special benefits.

B. ENSURE BENEFITS ARE APPLIED PROPORTIONALLY

The plan should detail exactly which parcel appears in which zone, the address of that parcel, the annual assessment that will be levied based on the zone and the level of benefits it will receive. By breaking down the district into zones and applying assessments based on the type of parcel and which zone it is in, a district's report will serve as evidence of the special benefits each parcel will receive.

A plan that details that a particular zone within the district is made up primarily of a specific type of parcel, such as residential, public or retail, will show that a particular zone will require limited, moderate or extensive services. The level of services a particular zone of parcels will receive should be directly related to the amount a parcel in that zone should be assessed.

VI. CONCLUSION

Practitioners and local government officials should be cognizant of the shifting burden established by the California Supreme Court in *Silicon Valley*. After this decision, local governments must ensure that proposed business improvement districts assess the parcels in the district in proportion to the benefits each will receive, as well as ensure the benefits those parcels are receiving are true "special" benefits and not the general benefits the locality as a whole will receive. Some may argue that while this decision marks a shift in the burden of proof, the court was merely adhering to the language established in 1996 when the voters passed Proposition 218 Either way, local governments will bear the burden of proving their proposed district meets the requirements of 218 if challenged in court.

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63. Id at 333.

64. Id.

65. Id

66. Id.